

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TRACY R. HUFF,

Defendant-Appellant.

UNPUBLISHED

June 14, 2007

No. 270556

Lenawee Circuit Court

LC No. 05-011493-FH

Before: Fitzgerald, P.J., and Sawyer and O’Connell, JJ.

PER CURIAM.

Pursuant to a plea agreement, defendant pleaded guilty of solicitation of an assault with intent to do great bodily harm less than murder, MCL 750.157b and MCL 750.84, and was sentenced to 38 to 60 months’ imprisonment. She appeals by delayed leave granted. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that there was an inadequate factual basis for her plea. However, because defendant did not move to withdraw her plea in the trial court and did not bring a timely motion to remand, appellate review of this issue is waived. MCR 6.310(C); *People v Kaczorowski*, 190 Mich App 165, 172-173; 475 NW2d 861 (1991).

Defendant also argues that the trial court abused its discretion by departing from the sentencing guidelines range of zero to eleven months. Under the sentencing guidelines act, a court may impose a minimum sentence in accordance with the appropriate guidelines range, MCL 769.34(2), or it may depart from the guidelines range if it has a substantial and compelling reason to do so, and it states on the record the reasons for departure, MCL 769.34(3). A “substantial and compelling” reason is an objective and verifiable reason that “keenly” or “irresistibly” grabs a court’s attention and is “of considerable worth” in deciding the length of the sentence. *People v Babcock*, 469 Mich 247, 257; 666 NW2d 231 (2003) (internal citation and quotation marks omitted).

[T]he existence or nonexistence of a particular factor is a factual determination for the sentencing court to determine, and should therefore be reviewed by an appellate court for clear error. The determination that a particular factor is objective and verifiable should be reviewed by the appellate court as a matter of law. A trial court’s determination that the objective and verifiable factors present in a particular case constitute substantial and compelling reasons

to depart from the statutory minimum sentence shall be reviewed for an abuse of discretion. [*Id.*, p 264-265 (internal citation and quotation marks omitted).]

An abuse of discretion occurs when the trial court selects an outcome that is outside the principled range of outcomes. *Id.*, p 269.

Defendant and her husband hired an individual to beat the wife of defendant's ex-husband with a baseball bat. The substantial and compelling reasons cited by the trial court were primarily based on offense variables that were not scored because the plan was foiled. The court considered the planned aggravated use of a weapon, the lethal potential of the weapon, defendant's intent to inflict great bodily harm on the victim with a bat, which could have easily resulted in death or permanent injury, and the plan to have the hit man treat the victim with excessive brutality. The trial court's determination that these factors existed was not clear error. Defendant does not claim that the factors cited by the court were not objective and verifiable or that they were already taken into account in determining the appropriate guidelines range.

The trial court's determination that these factors constituted substantial and compelling reasons to depart from the guidelines range and to impose a minimum sentence of 38 months does not reflect an outcome outside the principled range of outcomes. *Babcock, supra*, p 269. Defendant's argument that "[n]o one was injured, no property was taken and nothing was damaged" minimizes her criminal conduct which, but for the fortuitous circumstance that the "hit man" was actually a police officer, would have likely resulted in serious, perhaps life-threatening or permanent, injuries to the victim. Defendant is properly punished for what she intended to accomplish.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ David H. Sawyer

/s/ Peter D. O'Connell